

CHEYENNE RIVER SIOUX TRIBE,	:	Order Vacating Decision, Remanding
Appellant	:	Case, and Referring Request for
	:	Waiver of 25 C.F.R. § 166.13(b) to
v.	:	the Assistant Secretary - Indian Affairs
	:	
GREAT PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF	:	Docket No. IBIA 00-63-A
INDIAN AFFAIRS,	:	
Appellee	:	December 20, 2000

Appellant Cheyenne River Sioux Tribe seeks review of a decision issued by the Great Plains Regional Director, Bureau of Indian Affairs, increasing the minimum acceptable reservation rental rate for the 2000 grazing season on its reservation. This case presents the same situation as the cases addressed in Lange v. Great Plains Regional Director, 35 IBIA 279 (2000), *i.e.*, because of a lack of information as to the expiration date of grazing permits on the Cheyenne River Reservation, the Board is unable to determine whether this appeal is controlled by its decision in Long Turkey v. Great Plains Regional Director, 35 IBIA 259 (2000), or its decision in Fort Berthold Land and Livestock Association v. Great Plains Regional Director, 35 IBIA 266 (2000). Therefore, the decision here must also be vacated and the matter remanded to the Regional Director to make this determination and to take appropriate action.

However, Appellant raises an argument that was not addressed in either Long Turkey or Fort Berthold. Appellant contends that it determined that the minimum rate for tribal lands leased by tribal members should be \$1.00 per AUM (animal unit month), as opposed to the \$9.14 per AUM set by the Regional Director. Appellant further argues that this rate should have been applied for all tribal lands regardless of the ownership of livestock being grazed on those lands.

Under 25 C.F.R. § 166.13(a), a tribe has full authority to set the minimum rate for tribal lands being grazed by livestock owned by tribal members. Appellant's argument relates to that part of 25 C.F.R. § 166.13(b) which provides that the Regional Director shall set the minimum rate that will apply to "non-Indian owned livestock which allocated permittees may be authorized to graze on tribal lands." This argument challenges the regulation. As the Board has stated on many prior occasions, it lacks authority to declare invalid a duly promulgated Departmental regulation. See, e.g., Shoshone-Bannock Tribes v. Portland Area Director, 35 IBIA

242, 247 (2000), and cases cited therein. Accordingly, the Board lacks authority to address this aspect of Appellant's argument. 1/

Appellant submits a copy of its April 17, 2000, letter to the Regional Director in which it requested a waiver of 25 C.F.R. § 166.13(b). It also submits a copy of the May 17, 2000, letter from the Regional Director in which she denied the requested waiver. Appellant now asks that the Board grant the waiver.

The Board is not aware that authority to waive regulations in 25 C.F.R. Chapter I has been delegated to BIA Regional Directors. It is aware that such authority has not been delegated to it. Ballard v. Acting Eastern Oklahoma Regional Director, 35 IBIA 255 (2000). Therefore, to the extent that Appellant seeks a waiver of 25 C.F.R. § 166.13(b) from the Board, the Board lacks authority to grant the relief requested. However, Appellant's request for a waiver of the regulation will be referred to the Assistant Secretary - Indian Affairs.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Great Plains Regional Director's decision is vacated and this matter is remanded to her for further consideration in accordance with the decisions in Long Turkey and Fort Berthold. Appellant's request for a waiver of 25 C.F.R. § 166.13(b) is referred to the Assistant Secretary - Indian Affairs.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

1/ BIA published proposed revisions to its grazing regulations at 65 Fed. Reg. 43874, 43934 (July 14, 2000). Proposed section 166.400, "Who establishes grazing rental rates?," would provide:

"(a) For tribal lands, a tribe may establish a grazing rental rate that is less or more than the grazing rental rate established by [BIA]. [BIA] will assist a tribe to establish a grazing rental rate by providing the tribe with available information concerning the value of grazing on tribal lands.

"(b) [BIA] will establish the grazing rental rate by determining the fair annual rental for:

"(1) Individually owned Indian lands; and

"(2) Tribes that have not established a rate under paragraph (a) of this section."

65 Fed. Reg. at 43943.